

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 694

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Hector H. Balderas

AN ACT

RELATING TO CRIMINAL SENTENCING; PROVIDING FOR JURY
DETERMINATION OF AGGRAVATING CIRCUMSTANCES AS THE BASIS FOR A
JUDGE'S DECISION TO ALTER A BASIC SENTENCE OF INCARCERATION;
AMENDING A SECTION OF THE CRIMINAL SENTENCING ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 31-18-15.1 NMSA 1978 (being Laws 1979,
Chapter 152, Section 2, as amended) is amended to read:

"31-18-15.1. ALTERATION OF BASIC SENTENCE--MITIGATING OR
AGGRAVATING CIRCUMSTANCES--PROCEDURE. --

A. The court shall hold a sentencing hearing to
determine if mitigating or aggravating circumstances exist and
take whatever evidence or statements it deems will aid it in
reaching a decision to alter a basic sentence. The ~~court~~
judge may alter the basic sentence as prescribed in Section

. 153138. 1

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 31-18-15 NMSA 1978 upon:

2 (1) a finding by the judge of any mitigating
3 ~~[or aggravating]~~ circumstances surrounding the offense or
4 concerning the offender ~~[If the court determines to alter the~~
5 ~~basic sentence, it shall issue a brief statement of reasons for~~
6 ~~the alteration and incorporate that statement in the record of~~
7 ~~the case.]~~; or

8 (2) a finding by the jury beyond a reasonable
9 doubt of any aggravating circumstances surrounding the offense
10 or concerning the offender.

11 B. The ~~[judge]~~ jury shall not consider the ~~[use of~~
12 ~~a firearm or prior felony convictions as aggravating~~
13 ~~circumstances for the purpose of altering the basic sentence.]~~
14 following as aggravating circumstances:

15 (1) the use of a firearm, as provided in
16 Section 31-18-16 NMSA 1978;

17 (2) a prior felony conviction, as provided in
18 Section 31-18-17 NMSA 1978; or

19 (3) the commission of a crime motivated by
20 hate, as provided in the Hate Crimes Act.

21 C. The judge shall determine if the presentation of
22 evidence or statements regarding an alleged aggravated
23 circumstance shall be presented to the jury during the trial
24 for the underlying offense or following the determination of
25 guilt or innocence.

. 153138. 1

1 D. If the judge determines to alter the basic
2 sentence, the judge shall issue a brief statement of reasons
3 for the alteration and incorporate that statement in the record
4 of the case.

5 [~~C.~~] E. The amount of the alteration of the basic
6 sentence for noncapital felonies shall be determined by the
7 judge. However, in no case shall the alteration exceed one-
8 third of the basic sentence; provided that when the offender is
9 a serious youthful offender or a youthful offender, the judge
10 may reduce the sentence by more than one-third of the basic
11 sentence. "

12 Section 2. EFFECTIVE DATE. --The effective date of the
13 provisions of this act is July 1, 2005.